



210482

**NEW JERSEY
DEPARTMENT OF TRANSPORTATION**

SURFACE TRANSPORTATION BOARD (STB)

STB FINANCE DOCKET NUMBER 33388 (Sub-No. 91)

**CSX CORPORATION AND CSX TRANSPORTATION, INC.,
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY
CONTROL AND OPERATING LEASES/AGREEMENTS
CONRAIL INCORPORATED AND CONSOLIDATED RAIL CORPORATION**

[GENERAL OVERSIGHT]

**PUBLIC HEARING
APRIL 2, 2004, 12:00 NOON
CEREMONIAL COURTROOM #2
CLARKSON S. FISHER FEDERAL BUILDING & COURTROOM
402 EAST STATE STREET
TRENTON, NEW JERSEY**

TESTIMONY OF

**JOHN F. LETTIERE
COMMISSIONER, NEW JERSEY DEPARTMENT OF TRANSPORTATION
CHAIRMAN, NEW JERSEY TRANSIT CORPORATION**

I. INTRODUCTION

Good afternoon. I am Jack Lettiere, Commissioner of the New Jersey Department of Transportation and Chairman of the Board, New Jersey Transit Corporation (NJ Transit). On behalf of Governor James McGreevey, thank you for the opportunity to present these remarks this afternoon

The State of New Jersey is a major freight distribution platform for over 22 million consumers residing within the boundaries of the New York/New Jersey/eastern Connecticut/eastern Pennsylvania and Delaware metropolitan areas and a major freight port of entry through Port Newark/Elizabeth for large parts of North America. The State of New Jersey has experienced dramatic growth in freight traffic over the last several years and the growth trend will continue for many years to come. New Jersey has also experienced significant growth on its existing commuter rail services, together with demand for new passenger rail services on the State's rail network. New Jersey recognizes the value of its rail infrastructure in mitigating environmental, energy usage, congestion and quality of life issues faced by its citizens. The State has a genuine interest in ensuring that Conrail operations in the North Jersey and South Jersey/Philadelphia Shared Assets Areas continue to thrive and provide all of the public benefits anticipated and described in the Application to acquire control of Conrail filed by Norfolk Southern (NS) and CSX Transportation (CSX) and approved by the Surface Transportation Board.

I appreciate the opportunity to testify this afternoon on the status of CSX and NS operations within the North Jersey and South Jersey/Philadelphia Shared Assets Areas.

II. THE SETTLEMENT AGREEMENT

On March 20, 1998, Mr. John Snow, Chairman, CSX, Mr. David Goode, Chairman, Norfolk Southern and my predecessor, Commissioner John Haley, signed a Letter of Understanding that confirmed the understandings reached between the representatives of NJDOT, NJ Transit, CSX, and NS regarding the transactions contemplated in the Control Case as they affect NJDOT and NJ Transit. The letter covered ten aspects, but the focus of my comments this afternoon will principally center on coordination with NJDOT and NJ Transit in the Conrail Shared Assets Areas within New Jersey. A copy of that letter is included with this testimony.

III. NJDOT COMMENTS IN FOURTH ROUND OF CONRAIL OVERSIGHT PROCEEDING

Pursuant to the fourth round of the Conrail general oversight proceeding on July 14, 2003, I submitted comments to the Board regarding State of New Jersey concerns about NS and CSX operations within the North Jersey Shared Assets Area (NJSAA). Specifically, NJDOT expressed its concern about the current gap between the promise and the reality of North Jersey Shared Assets Area. NJDOT highlighted the public benefits that CSX and NS anticipated as a result of the Conrail Transaction:

- Both CSX and NS claimed that Conrail Shared shippers would “benefit from extended single-line routing opportunities, improved service and increased competition...” (CSX/NS-119 at 22.)
- Both CSX and NS indicated that they would “compete vigorously for traffic in the Conrail Shared area.” (Id. at 8.)

- Both CSX and NS said the Conrail Shared Operating Plan took into account “increases in traffic from both truck-to-rail diversions resulting from the more efficient rail service made available by the transaction and traffic growth from new marketing opportunities made available by the transaction.” (Id. at 141.)
- Both CSX and NS indicated that both railroads would “invest heavily in capital improvements to their respective systems in order to assure that they have the necessary facilities to compete effectively” in the Conrail Shared market. (Id. at 9.)
- NS indicated that it would institute new intermodal and Triple Crown operations that would improve services to and from Northern New Jersey and provide a viable alternative to trucks in several service lanes. (Id. at 44.)

The NJDOT comments submitted on July 14, 2003 also questioned the degree to which the public benefits anticipated by CSX and NS have come to fruition. Specifically:

- NJDOT revealed that the North Jersey Shared Assets Area has not resulted in the promised pro-competitive effects, and that many shippers have seen no increased competition, despite attempts by shippers and short-lines to facilitate competition.
- NJDOT opined that NS has not used facilities in North Jersey to offer attractive and more competitive single-line services to domestic shippers. Instead, NS has opted-out of rail service in the North Jersey Area and has openly marketed its rail facilities outside of the North Jersey Area and has informed shippers of the higher cost of all-rail moves into and out of the North Jersey Area as compared to truck-rail moves.
- NJDOT also expressed its concerns regarding the failure of CSX and NS to provide sufficient resources to Conrail Shared Assets.

- NJDOT stated that the CSAO appears to be understaffed, oftentimes resulting in significant service delays.
- NJDOT informed the Board that CSX and NS agreed to provide and implement economic development plans to promote the development of rail traffic within the Port Authority of New York and New Jersey's Port District, which covers virtually all of the North Jersey Shared Assets Area; but CSX and NS had yet to develop these economic development plans.

Although NS and CSX did not share NJDOT's view of the gap between the promise and reality of the North Jersey Shared Assets Area as expressed in the July 14, 2003 comments, they nevertheless agreed to meet and confer with NJDOT to discuss the concerns.

Because of their agreement to meet, and the shared desire to resolve differences outside of the Board process, NJDOT did not seek any Board-imposed changes with respect to the North Jersey Shared Assets Area during the fourth annual round of the Conrail general oversight proceeding. However, NJDOT informed the Board that if discussions with NS and CSX were not fruitful, NJDOT would seek Board-imposed changes with respect to the North Jersey Shared Assets Area.

IV. SUMMARY OF NJDOT/CSX AND NJDOT/NS MEETINGS

On October 8, 2003, representatives from NJDOT; NJ Transit, the statewide transit system operator; and, the North Jersey Transportation Planning Authority (NJTPA), the designated metropolitan planning organization for northern New Jersey, met with representatives from NS. The discussions centered on NS industrial development and marketing programs along with their short line business development plan for New Jersey. A significant outcome of that meeting was a better understanding of how NS approaches economic development projects. NJDOT also requested NS to

provide intermodal and carload traffic volume counts and any information available on capital spending that may have occurred within New Jersey. NJDOT has received the requested information from NS.

Several weeks later, on October 27, 2003, representatives from NJDOT, NJ Transit and NJTPA had the opportunity to meet with representatives from CSX. The discussions centered on CSX industrial development and marketing programs, site location processes and the CSX short line business development plan for New Jersey. A second meeting held on March 17, 2004 between NJDOT and CSX provided additional information concerning the CSX intermodal business plan and its bulk commodity trans-load operation, specifically the TRANSFLO Terminal Services facility located in Elizabeth, NJ. As a follow-up to those meetings, NJDOT requested from CSX intermodal and carload traffic volume counts plus any additional information about capital spending that may have occurred within New Jersey.

The information derived from all of these meetings with NS and CSX has been very helpful. I would like to acknowledge the positive, cooperative and open manner in which the meetings were conducted.

V. REQUEST FOR IMPROVEMENT OF CSX/NS OPERATIONS OF NEW JERSEY SHARED ASSETS AREAS.

From our discussions and initial assessment of the data that is now becoming available, I see a number of positive results that have come from the CSX/NS/Conrail transaction as well as areas that require additional effort. Do we still have other concerns? Yes! My direction is to continue the on-going discussions between all of the parties and work towards addressing the remaining issues.

Lets start with the positives:

- NS and CSX have undertaken significant capital investment at such locations as the Port Authority of New York & New Jersey Express Rail facilities at Port Newark/Port Elizabeth, the CSX trans-load facility located in Elizabeth, the NS "E" Rail yard also located in Elizabeth, and the NS Croxton Yard facility enhancements.
- The two Class I carriers are also joining with NJDOT in a cost sharing partnership that will see the re-installation of a new second main line track at several critical locations in the north central part of New Jersey.
- Finally, both CSX and NS have worked diligently with NJ Transit in resolving the passenger line issues consistent with the March 20, 1998 Letter of Understanding. Several projects such as the new Townley Station on the Lehigh Line and the Bordentown Secondary light rail service projects have been completed. Given the complexity of NJ Transit, Conrail, CSX and NS train operations on the New Jersey rail network, all parties will have to continue working cooperatively to ensure that the safety and reliability of all rail services in this region continue to be maintained at the highest levels.

Remaining areas of concern:

- I would ask the STB to encourage all parties to continue the use of Northeast Operating Rules Advisory Committee (NORAC) Operating Rules on all Conrail lines within the New Jersey Shared Assets Area. Even though the March 20, 1998 Letter of Understanding required that the NORAC rules be retained for three years from date of consummation, New Jersey believes that the NORAC Rules should continue to be used beyond the original time period because of the added value of the various railroad operators on this region using the same operating rules.

- The relationship that exists between the Class I carriers and their respective connecting short-lines needs to be looked at in more detail. As the State addresses increasing highway congestion and safety issues along Smart Growth initiatives, the New Jersey short-line rail operators have a unique opportunity to support new economic development including job creation in our mature urban and suburban areas while helping to ease the ever present highway congestion problem. I ask that the concerned parties join together and develop a viable public/private business plan that would produce positive results for all the rail carriers.
- While New Jersey has seen a transition over the years to more service related industry, the manufacturing base of New Jersey is still an important economic element. I ask that the Conrail Shared Assets Operating Plan be reviewed to address carload traffic in addition to new intermodal operations. Carload and intermodal services are integral to many of our state manufacturing operations.
- A final issue concerning us is the routing and interchange of rail freight traffic between the class I, regional and Shortline operators in New Jersey. In an economy that measures time as a critical cost element, I have seen some anecdotal information showing slow, round-about, time consuming movement of cars between the various carriers. I believe this issue warrants a comprehensive look at the way freight moves today and how it could better move into the 21st Century.

VI. CONCLUSION

As New Jersey's population continues to grow, there is increasing pressure to meet the larger freight rail service needs for goods movement as well as to provide additional commuter rail service to more effectively move people to jobs. The challenge to efficiently move both goods and people is one that I face each and every day. We must have new, creative, out-of-the-box thinking and planning as we step forward to address major issues such as air quality, congestion, and sprawl, to name a few.

Realizing the full potential of Conrail Shared Assets is vital for the State of New Jersey to achieve its transportation, economic, and quality of life goals. I feel that progress must be made on our remaining areas of concern, and will continue to foster the coordination and collaboration required to achieve that end. I challenge both NS and CSX to continue "competing vigorously for traffic in New Jersey". This competition should produce results that are both positive and measurable for all parties.

While the New Jersey Department of Transportation does not now seek any formal Board-imposed changes with respect to the North Jersey and South Jersey/Philadelphia Shared Assets Areas, the State may seek Board-imposed changes with respect to these Shared Assets if future discussions with NS or CSX should prove to not be fruitful.

I am pleased that the Surface Transportation Board has taken this opportunity to visit the Garden State today in order to hear the testimony of many interested parties. Again, thank you for your time.

210482



JAMES E. MCGREEVEY
GOVERNOR

JACK LETTIERE
COMMISSIONER

July 14, 2003

VIA HAND DELIVERY

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

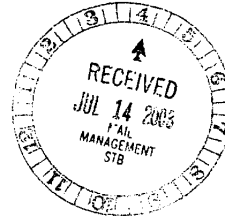
Re: **Finance Docket No. 33388 (Sub-No. 91)**

Dear Secretary Williams:

I am Commissioner of Transportation for the State of New Jersey. The Northern New Jersey region is the freight distribution platform for 18 million consumers in the New York/New Jersey/Connecticut metro area and a major freight port of entry for large parts of North America. Northern New Jersey has experienced dramatic growth in freight traffic over the last several years and the growth trend will continue for many years to come. NJDOT has a genuine interest in ensuring that the North Jersey Shared Assets Area ("NJSAA") thrives and provides all the public benefits anticipated and described in the Application to acquire control of Conrail filed by Norfolk Southern Railway Company ("NS") and CSX Transportation ("CSX") and approved by the Surface Transportation Board.

NJDOT has significant concerns about the current gap between the promise and the reality of the NJSAA.

STATE OF NEW JERSEY
DEPARTMENT OF TRANSPORTATION
1035 PARKWAY AVENUE
P.O. BOX 601
TRENTON, N.J. 08625-0601
609-530-3535



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In their Application, CSX and NS anticipated many public benefits as a result of the NJSAA:

- CSX and NS claimed that NJSAA shippers would "benefit from extended single-line routing opportunities, improved service and increased competition..." (CSX/NS-119 at 22.)
- CSX and NS indicated that they would "compete vigorously for traffic in the NJSAA." (Id. at 8.)
- CSX and NS said the NJSAA Operating Plan took into account "increases in traffic from both truck-to-rail diversions resulting from the more efficient rail service made available by the transaction and traffic growth from new marketing opportunities made available by the transaction." (Id. at 141.)
- NS indicated that it would institute new intermodal and Triple Crown operations that would improve services to and from Northern New Jersey and provide a viable alternative to trucks in several service lanes. (Id. at 44.)
- CSX and NS indicated that both railroads would "invest heavily in capital improvements to their respective systems in order to assure that they have the necessary facilities to compete effectively" in the NJSAA market. (Id. at 9.)

Unfortunately, the public benefits anticipated by CSX and NS have not come to fruition. The NJSAA has not resulted in the promised pro-competitive effects. Many shippers have seen no increased competition, despite attempts by shippers and shortlines to facilitate competition.

NS has not used facilities in North Jersey to offer attractive and more competitive single-line services to domestic shippers. NS has opted-out of rail service in the NJSAA. NS has openly marketed its rail facilities outside of the NJSAA and has informed shippers of the higher cost of all-rail moves into and out of the NJSAA as compared to truck-rail moves. NS marketing efforts have increased truck traffic in Northern New Jersey.

CSX and NS agreed to provide and implement economic development plans to promote the development of rail traffic within the Port Authority of New York and New Jersey's Port District, which covers virtually all of the NJSAA. CSX and NS have yet to develop these economic development plans.

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I have informed NS and CSX of NJDOT's concerns regarding the NJSAA. NS and CSX do not share NJDOT's view of the gap between the promise and the reality of the NJSAA, but they have agreed to meet and confer with NJDOT over the next several months to discuss our concerns. Because of their agreement to meet, and our shared desire to resolve our differences outside of the Board process, NJDOT does not now seek any Board-imposed changes with respect to the NJSAA. However, if our discussions with NS and CSX are not fruitful, NJDOT will seek Board-imposed changes with respect to the NJSAA. I am pleased that the Board intends to continue general oversight for the full 5-year term. The Board's continued oversight will facilitate resolution of NJDOT's concerns through negotiations.

Respectfully submitted,



Jack Lettiere
Commissioner of Transportation

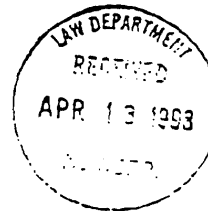
cc: Parties of Record

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CSX CORPORATION901 E. Cary Street, Richmond VA. 23219
(804) 782-1476NORFOLK SOUTHERN CORPORATIONThree Commercial Place, Norfolk, VA. 23510
(757) 629-2677

March 20, 1998

Commissioner John J. Haley, Jr.
Department of Transportation, State of New Jersey
New Jersey Transit Corporation
1035 Parkway Avenue, CN 601
Trenton, New Jersey 08625-0601



Dear Commissioner Haley:

CSX Corporation and CSX Transportation, Inc. (collectively referred to as "CSXT"), and Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively referred to as "NSR") filed an application with the Surface Transportation Board ("STB") for acquisition and control of Conrail, Inc. and Consolidated Rail Corporation ("Conrail"), in Finance Docket No. 33388, **CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company - Control and Operating Leases/Agreements - Conrail, Inc. and Consolidated Rail Corporation** (the "Control Case"). Representatives of New Jersey Transit Corporation ("NJT") and Department of Transportation, State of New Jersey ("NJDOT") (sometimes collectively referred to as "NJDOT/NJT"), have conferred with representatives of CSXT and NSR regarding the Control Case and its impact on New Jersey. All parties agree that the transactions contemplated by the Control Case, subject to STB consideration, will result in significant benefits to the public. This letter confirms the understandings reached between the representatives of NJDOT/NJT, CSXT, and NSR regarding the transactions contemplated by the Control Case as they affect NJDOT/NJT, and represents their entire formal agreement with respect to the following aspects of the Control Case:

- I. **NJDOT/NJT Statement in Support of Conrail Merger.** NJDOT/NJT agrees to withdraw its request for conditions and release a statement of its support for the acquisition of control and division of Conrail by CSXT and NSR, based on the substantive terms of this letter.
- II. **Coordination with NJDOT/NJT in the Shared Assets Areas.** CSXT, NSR and NJDOT/NJT agree that an effective mechanism for coordination and communication among NJT, Conrail Shared Assets Operator ("CSAO"), NSR and CSXT is necessary to ensure that passenger and freight services continue to operate safely, reliably and conveniently after the consummation of the transactions contemplated by the Control Case.
 - A. The parties agree to meet regularly, in accordance with a schedule to be established by the parties, to discuss major issues necessary to ensure the smooth

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operation of both the passenger and freight service within the New Jersey Shared Assets Areas. Present at these meetings will be the Commissioner of Transportation (or designee(s)), the senior CSAO official (or designee) in charge of the New Jersey Shared Assets Areas, and the senior official of each of CSXT and NSR (or designees) having responsibility for freight rail operations in New Jersey, including such operations in the New Jersey Shared Assets Areas. In the event that New Jersey representatives disagree with a solution to an issue of concern to NJDOT/NJT, arrived at by NSR, CSXT, and CSAO, the Commissioner of Transportation may confer with the President or Chief Executive Officer of CSXT and/or NSR to resolve such issues.

- B. In addition, the parties agree that close communications and cooperation at the operating level shall be maintained between NSR, CSXT, CSAO and NJT.

- III. Automatic Train Control/Positive Train Stop ("ATC/PTS"). NSR, CSXT and CSAO trains operating over NJT owned lines will include locomotive(s) equipped with automatic train control/positive train stop ("ATC/PTS") on-board apparatus. NJDOT/NJT shall not be responsible to pay any part of the costs of acquisition, installation, maintenance or the operating expense of any such on-board apparatus; however, this does not preclude NSR, CSXT and/or CSAO from seeking recovery from any other source. The parties agree that all systems used by each party on NJT-owned properties will be compatible with Amtrak requirements and FRA regulations, or that they will adopt such alternative processes and procedures as may be mutually acceptable.
- V. Maintenance Of Way Reimbursement. The parties agree that, upon consummation of the transactions contemplated by the Control Case, they will enter into negotiations regarding the rates paid by either NJT or Conrail for trackage rights under the NJT and Conrail Trackage Rights Agreement, which was effective on October 1, 1984. These negotiations will include consideration of revising the method for calculation of such rates, effective after consummation of the transactions contemplated by the Control Case. The parties further agree that any change in these rates negotiated by the parties will not be effective until the next anniversary date of the Trackage Rights Agreement after the successful conclusion of negotiations.
- V. Townley Station. NSR and CSXT acknowledge that a new passenger rail station will be constructed by NJT on the Lehigh Line between NK and Aldene, and agree to cooperate and support NJT's effort to achieve timely construction and operation of the station, in accordance with design and operating plans to which all parties hereto agree.
- VI. NEC Discussions. NSR and CSXT agree that, where NJT interests may be affected and subject to Amtrak's concurrence, NJT should be given the opportunity to participate in discussions between NSR, CSXT, CSAO, and Amtrak with regard to usage of the

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Northeast Corridor for freight purposes.

VII. **Operating Rules.** The parties agree that the Northeast Operating Rules Advisory Committee ("NORAC") Operating Rules on all Conrail lines within the New Jersey Shared Assets Areas (as defined in the Application) will be retained by NSR, CSXT, CSAO and NJT for three years from the date of consummation of the transaction.

VIII. **New Rail Starts.**

A. NSR and CSXT agree to work closely with NJT to examine and refine proposals for new passenger rail service on the following generally described rail lines, and to cooperate in their development where feasible:

1. The Washington Secondary between Hackettstown and Phillipsburg, N.J.;
2. The Elizabeth Industrial Track between Elizabethport and Cranford, N.J.;
3. The Amboy Secondary Track between South Amboy, Jamesburg and Midway (Amtrak) and the Freehold Secondary Track between Jamesburg and Freehold;
4. The Southern Secondary between South Lakewood and Woodmansie, N.J.

B. Subject to the rights of NJDOT and NJT under contracts with Conrail, any new passenger rail service in Sections VIII.A. will be developed consistent with the following principles:

1. All applicable federal and industry railroad safety laws, regulations, rules and standards;
2. The importance and necessity for growth and increasing reliability of rail freight service throughout the NSR and CSXT respective networks, including New Jersey;
3. No NSR, CSXT, or CSAO direct or indirect subsidy of passenger rail operations;
4. A level of tort liability indemnity and/or insurance acceptable to NSR and CSXT, and taking into account federal and state law, for those areas of rail operation under the control of NSR, CSXT, or CSAO; and
5. The importance and necessity of rail passenger service as a tool to help

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solve mobility, transportation congestion, and air quality problems,
consistent with the needs of the privately owned rail freight systems.

IX. NYS&W. NSR and CSXT (i) acknowledge that the Delaware-Otsego Corporation and/or New York, Susquehanna & Western Railroad (collectively referred to herein as "NYS&W") have authority, subject to NYS&W's agreements with NSR and CSXT, to negotiate for the sale to NJDOT/NJT of the NYS&W right-of-way (or the grant of some other interest therein), and (ii) represent that, to the extent permitted by their agreements with NYS&W, NSR and CSXT will support the negotiations between NYS&W and NJDOT/NJT.

X. Bordentown Secondary.

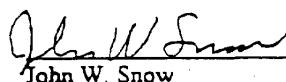
- A. NJT is designing and planning to construct and operate a new light rail service between Trenton and Camden along and in the right-of-way constituting the Bordentown Secondary Track. NSR and CSXT agree to give this project their early and particular attention. In addition to application of the principles set forth in Section VIII.B., NJDOT/NJT will continue to develop plans for this service with Conrail consistent with:
1. Passenger and freight safety;
 2. The continuation and growth in consistent and reliable local freight service that meets the needs of New Jersey shippers;
 3. Allowance for the route's continued use as a detour route for railroad through-freight service in the case of a major failure in the normal CSXT or NSR routes; and
 4. To the extent required by law and FRA regulations, or by Conrail and industry standards, the need to keep passenger rail separate from freight rail operations.
- B. From the present time until approval of the Conrail acquisition, NSR and CSXT agree to assist with the project only to the extent of keeping abreast of the discussions and providing such relevant information regarding engineering and operating standards and practices as will facilitate the project development. In addition, refinements to the NSR's and CSXT's plans that may affect the project, such as changes in routings or freight volumes, will be shared with NJDOT/NJT as they are developed.
- C. Consistent with the foregoing, upon approval of the Conrail acquisition, and to the

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extent that issues are unresolved and agreements not concluded, NSR and CSXT will give the light rail project priority attention and assist NJT in developing a mutually agreeable project.

If the above accurately reflects our understandings, please sign in the appropriate place below and return an original copy to us.

Sincerely,



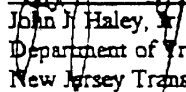
John W. Snow
Chairman, President and
Chief Executive Officer
CSX Corporation



David R. Goode
Chairman, President and
Chief Executive Officer
Norfolk Southern Corporation

Agreed to:

By:



John H. Haley, Jr. Commissioner
Department of Transportation, State of New Jersey
New Jersey Transit Corporation